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IN THE

Supreme Court of the United States

October Term, 1984

THEODORE CLEAVINGER, *ET AL.*,

Petitioners,

vs.

DAVID SAXNER AND ALFRED CAIN, JR.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Brief *Amici Curiae* of Prisoners' Legal Services of New York, Inc.; National Conference of Black Lawyers; National Lawyers Guild, *Amicus* Committee; National Legal Aid and Defenders Association; Alabama Prison Project; Southern Poverty Law Center (Alabama); Jerome N. Frank Legal Services Organization (Connecticut); Florida Justice Institute, Inc.; Legal Services for Prisoners, Inc. (Kansas); Prisoners' Assistance Project of the Legal Aid Bureau, Inc. (Maryland); Gay Community News Prisoner Project (Massachusetts); Massachusetts Correctional Legal Services; Mississippi Chapter of the National Conference of Black Lawyers; New York State Defenders' Association; Keystone Legal Services, Inc. (Pennsylvania); Defender General's Office of the State of Vermont; Institutional Legal Services Project of Evergreen Legal Services (Washington); and Wisconsin Correctional Services, in support of Respondents.

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Interest Of *Amici Curiae*

This brief is filed on behalf of Prisoners' Legal Services of New York, Inc.; National Conference of Black Lawyers; National Lawyers Guild, Amicus Committee; National Legal Aid and Defenders Association; Alabama Prison Project; Southern Poverty Law Center (Alabama); Jerome N. Frank Legal Services Organization (Connecticut); Florida Justice Institute, Inc.; Legal Services for Prisoners, Inc. (Kansas); Prisoners' Assistance Project of the Legal Aid Bureau, Inc. (Maryland); Gay Community News Prisoner Project (Massachusetts); Massachusetts Correctional Legal Services; Mississippi Chapter of the National Conference of Black Lawyers; New York State Defenders' Association; Keystone Legal Services, Inc. (Pennsylvania); Defender General's Office of the State of Vermont; Institutional Legal Services Project of Evergreen Legal Services (Washington); and Wisconsin Correctional Services, with the written consent of the parties as provided in Rule 42 of the Rules of this Court.

All of the national, state and local organizations listed above are committed to protecting the fundamental rights of underprivileged and incarcerated men and women throughout the United States. These groups service thousands of prisoner inmates who, without their help, would be left with no legal representation. *Amici* share a deep conviction that if correctional facility disciplinary officers are conferred absolute immunity when they violate inmates' rights in the course of their duties, inmates will be left ultimately without any ability to be compensated for or deter unconstitutional acts committed against them.

A full description and statement of interest of each of the organizations is set forth in the brief as Appendix A, *infra*.

I. Summary Of Argument

Prison inmates no less than scions of society are entitled to sue for damages for harm suffered from deprivations of their federal constitutional rights by government officials. Since *Wolff v. McDonnell*, this Court has insisted that inmates must be provided constitutionally mandated due process safeguards before prison officials can punish them by stripping them of their liberty.

In both federal and state prison disciplinary systems, disciplinary committee members are responsible for ensuring that inmates are provided their constitutional rights. Similar to the vast majority of state prison disciplinary hearing officers, Bureau of Prisons Institution Disciplinary Committee [IDC] members are prison employees who possess few of the characteristics considered essential to permit their exercise of independent judgment. Like the majority of state procedures, those followed in the Bureau of Prisons' disciplinary system lack many of the due process safeguards considered crucial to ensure an objective and fair determination of the facts. Under these circumstances, neither IDC members nor state prison disciplinary committee members are entitled to shroud themselves with the exceptional shield of quasi-judicial absolute immunity when they violate the constitutional rights of inmates.

The absence of judicially equivalent procedural safeguards in federal and state prison disciplinary systems has more than theoretical implications. Researchers have uniformly found that where the hearing officer is a member of the prison corrections staff, and where only minimal procedures circumscribe the accused inmate's rights and the hearing officer's discretion, the cardinal function of the prison disciplinary hearing is to impose punishment rather than to uncover the truth.

As prisoners' advocates familiar with the prison disciplinary systems, *amici* have experienced what researchers have concluded. The New York State prison system, with the second largest prison population in the nation,[1] offers a revealing and typical example. The regulations governing New York's inmate disciplinary procedures provide inmates with little more than the fundamental rights dictated by *Wolff v. McDonnell*. Moreover, a single corrections official, who has many other duties in the prison unrelated to the disciplinary system, conducts the hearing. Consequently, as experience has demonstrated, the fact-finding component of the hearing is all but eliminated.

The Commissioner of New York's prison system recently conceded as much. He testified that when corrections officers physically assault inmates, they invariably charge inmates with physically assaulting them. Nevertheless, disciplinary hearing officers in New York prisons almost without exception find inmates guilty of physically assaulting corrections staff solely on the basis of the misbehavior reports written by the allegedly assaulted officers.

Given the potential for abuse in an insulated, prison-controlled, loosely structured inmate disciplinary system such as New York's, an inmate's ability to invoke the limited constitutional procedures available to defend himself or herself becomes critically important. Concomitantly, the possibility of a damage award against a hearing officer becomes the chief, if not only, mechanism to deter the officer's violations of an inmate's clearly established constitutional rights. An inmate's need for such deterrence is particularly acute because he or she will have incurred much of the harm resulting from the infringement of constitutional rights before a court can reverse the hearing officer's disposition.

[1] Address by Thomas A. Coughlin, III, Commissioner, New York State Department of Correctional Services, at Women and Prison Conference (May 17, 1985).

Conferring absolute immunity upon a prison disciplinary hearing officer in such circumstances will effectively render meaningless an inmate's constitutional due process protections.

The federal government and the states of California, Alabama, Hawaii, and Wyoming nevertheless complain that a tidal wave of frivolous inmate litigation will inundate the federal judiciary if this Court declines to exempt prison disciplinary hearing officers from financial liability for their plainly unconstitutional conduct. Because most existing precedent does not recognize hearing officer absolute immunity, this concern is baseless.

In addition, despite their protests to the contrary, there is no indication that without absolute immunity, hearing officers will be the targets of uncountable vexatious lawsuits. What the federal and state governments fail to mention is that a damage action cannot succeed, and in fact can be dismissed summarily on the administrative record, if the hearing officer chooses to provide rather than violate an inmate's few but important constitutional rights. Regardless, adequate procedural devices exist to protect hearing officers from the burden of defending against harassing litigation.

This Court should not compromise an inmate's ability to recover damages for injuries resulting from the violation of significant constitutional rights because of the government's implicit assertion that inmates' constitutional rights are less worthy of judicial protection than those of other individuals in society. In balancing the policy considerations, the dual goals of deterring and compensating for unconstitutional conduct clearly outweigh a prison disciplinary hearing officer's desire to act unconstitutional with impunity.

II. The Conferral Of Quasi-Judicial Absolute Immunity Upon Prison Disciplinary Hearing Officers Is Not Justified Where Neither The Role Of The Hearing Officer Nor The Nature Of The Disciplinary Hearing Is Functionally Comparable To Its Respective Judicial Counterpart.

Beginning with *Scheuer v. Rhodes*, 416 U.S. 232 (1974), this Court has stressed that executive branch officials are generally entitled to only qualified immunity from liability for damages stemming from unconstitutional acts committed in the performance of their duties. Emphasizing its significance, the Court observed that a damage award can serve to deter unconstitutional conduct as well as compensate for injuries. *Id.* at 238.

That prison officials are entitled to a qualified rather than an absolute immunity defense with respect to violations of inmates' constitutional rights was established in *Procunier v. Navarette*, 434 U.S. 555 (1978). The common law tradition of absolute immunity from damages for judges, however, remains intact even where unconstitutional conduct is involved. *See Pierson v. Ray*, 386 U.S. 547 (1967). *Cf. Pulliam v. Allen*, _____ U.S. _____, 104 S.Ct. 1970 (1984) (judicial absolute immunity poses no bar to prospective injunctive relief).

Against this background, this Court was confronted in *Butz v. Economou*, 438 U.S. 478 (1978) with the question of whether an executive branch official who conducted an administrative adjudicative proceeding was absolutely immune from liability for damages arising from the official's unconstitutional conduct in the course of the proceeding. While reaffirming that executive officials are generally barred from invoking an absolute immunity defense, the Court noted that the general rule is "subject to those exceptional situations where it is demonstrated that absolute immunity is essential for the conduct of public business." *Id.* at 507. The *Butz* Court

then proceeded to create an "exceptional" and narrow "quasi-judicial absolute immunity" defense for executive branch adjudicative hearing officers who are "functionally comparable" to judges. *Id.* at 513.

Two factors were critical to this Court's determination that the chief hearing officer of the Department of Agriculture was functionally comparable to a judge, and must be analyzed in this case as well. First, the Court found that applicable law (specifically, the Administrative Procedure Act, 5 U.S.C. §554 *et seq.*) implements many of the procedural safeguards available in the judicial process.[2] Second, the Court determined that the powers of the hearing officer under the Administrative Procedure Act (APA) are comparable to those of a trial judge. *Id.*[3] As discussed by the Court, the judicially equivalent procedural devices in the APA were adopted to assure both the hearing officer's exercise of independent judgment and his or her insulation from agency or other outside influences. *Id.* at 513-14.

Applying this Court's carefully circumscribed criteria for granting quasi-judicial absolute immunity to the facts in this case, it is clear that Institution Disciplinary Committee [IDC] members are not entitled to invoke this ultimate defense. Indeed, based on *amici's* experiences

[2] The Court specifically referred to the following procedural protections:

> The proceedings are adversary in nature. See U.S.C. §555(b) (1976 ed.). They are conducted before a trier of fact insulated from political influence. See §554(d). A party is entitled to present his case by oral or documentary evidence, §556(d), and the transcript of testimony and exhibits together with the pleadings constitute the exclusive record for decision. §556(e). The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record. §557(c). *Butz*, 438 U.S. at 513.

[3] The powers of the hearing examiner include the power to issue subpoenas, rule on evidence, regulate the course of the hearing, and make or recommend decisions. 5 U.S.C. §556(c).

with inmate disciplinary hearing systems throughout the country, it is evident that few, if any, disciplinary systems incorporate the procedural devices this Court deemed essential for a bestowal of absolute immunity on an administrative hearing officer.

As an initial matter, the differences between a prison disciplinary system's constitutionally mandated procedural safeguards as defined in *Wolff v. McDonnell*, 418 U.S. 539 (1974) and the procedures provided in the APA render the prison disciplinary process substantially less adversarial than hearings conducted under the APA. For instance, hearing officers may refuse to call an inmate's witnesses, and may limit an inmate's access to other inmates to collect statements without explaining why. *Ponte v. Real*, _____ U.S. _____, 53 U.S.L.W. 4549 (May 21, 1985); *Wolff*, 418 U.S. at 566. Inmates are not entitled to confront or cross-examine adverse witnesses. *Wolff*, 418 U.S. at 567-68. Nor are prisoners constitutionally entitled to counsel or a substitute precisely because:

> [t]he insertion of counsel into the disciplinary process would inevitably give the proceedings a more adversarial cast and tend to reduce their utility as a means to further correctional goals. *Id.* at 570.

Additionally, and perhaps most significantly, it is constitutionally permissible for a hearing officer to have other custodial, security-related, and programmatic responsibilities for the daily operation of the prison, thereby diminishing the officer's capacity to act independently. *Id.* at 570-71. The hearing examiners in the Department of Agriculture, on the other hand, perform their adjudicatory duties as their sole functions.

It is apparent that the *Wolff* Court envisioned prison disciplinary hearings as informal, nonadversarial proceedings in which hearing officers are neither constrained by the procedural safeguards which govern judges and other administrative adjudicators, nor authorized to invoke judicially comparable powers. Thus, in a constitutional sense, the prison disciplinary hearing

officer is simply not functionally comparable to a judge. *Butz*, 438 U.S. at 513.

Nor is a prison disciplinary hearing officer functionally comparable to a judge in a practical sense. Although a handful of states provide inmates with greater procedural protections than are required by *Wolff*, *see, e.g.*, *Avant v. Clifford*, 67 N.J. 496 (1975), it is *amici's* experience that the vast majority of state prison disciplinary systems encompass only the basic requirements. *See, e.g.*, *Hilliard v. Scully*, 537 F.Supp. 1084 (S.D.N.Y. 1982).

III. The Overwhelming Majority Of State Prison Disciplinary Systems, Including Those Of *Amici* States, Incorporate Few, If Any, Of The Judicially Equivalent Characteristics Regarded As Critical To A Bestowal Of Quasi-Judicial Absolute Immunity Upon Administrative Hearing Officers.

The written procedures governing prison disciplinary proceedings promulgated by individual states sharply contrast with the hearing procedures examined by this Court in *Butz*.[4] As a general rule, inmate disciplinary

[4] The information in this section was gleaned from several sources. Available to *amici* were current state prison disciplinary system regulations from the following states: Alabama, California, Colorado, Hawaii, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, Washington, Wisconsin, and Wyoming. For information about other state systems, *amici* relied on a survey of the disciplinary systems in forty-one states, Guam, and the Federal Bureau of Prisons published in 6 *Corrections Compendium* No. 5, 3-7 (1981), and a comprehensive analysis of a 1980 survey of disciplinary systems in forty states, the District of Columbia, and the Federal Bureau of Prisons, published in Babcock, "Due Process in Disciplinary Proceedings," 22 *B.C.L. Rev.* 1009 (1981) & n.38, 1051-83. *Amici* also referred to B. Marin, *Inside Justice* (1983), an exhaustive study of the prison disciplinary systems in the United States and Great Britain. Unless otherwise indicated, the information summarized in this section derives from the most current sources available to *amici*, as described in this footnote.

hearings around the country are nonadversarial in nature and are conducted by untrained and inexperienced corrections staff who double as hearing officers.[5]

Charges filed against an inmate are heard by a disciplinary committee comprised of one or more members. In all but three states, hearing board members are corrections and administrative staff within the prison where the inmate resides, and are under the direct supervision of the facility's warden. The states of California, Hawaii, Arizona, and Wyoming, *amici* on the government's behalf, are among the majority of jurisdictions who use prison employees as hearing officers. Only one state, Michigan, uses hearing officers who as employees of an independent hearing division within the state corrections department, function exclusively as hearing officers.

Although twenty-four state systems bar the charging officer from serving on the hearing panel, the remaining systems apparently have no such prohibition. Corrections staff with direct knowledge of or involvement in the alleged incident are explicitly excluded from disciplinary committees in merely five states.

All states have regulations that allow the charging officer or another prison official to confine the inmate immediately after a violation is reported if the violation is deemed serious. When an inmate is confined in this way, most states assign a prison employee to obtain evidence for the inmate before the hearing. The employee, however, does not keep the gathered information confidential. Rather, the employee reports directly to the disciplinary hearing committee when the

[5] *See* Marin, *supra* note 4, at 130-215; Babcock, *supra* note 4, at 1051-82; Jacob and Sharma, "Disciplinary and Punitive Transfer Decisions and Due Process Values in the American Correctional System," 12 *Stetson L. Rev.* 1, 7-29, 71-134 (1982); Note, "Noble Holdings as Empty Promises: Minimum Due Process at Prison Disciplinary Hearings," 7 *New Eng. J. Prison L.* 145, 152-177 (1981).

investigation is complete, regardless of whether the information is favorable or harmful to the inmate.

As mandated by *Wolff v. McDonnell*, most states' regulations allow a prison employee to provide limited assistance to an inmate who is illiterate or unable to understand the charges. In *amici's* experience, however, an assistant is rarely assigned despite the high percentage of the prison population which is mentally ill or retarded and unable to prepare an adequate defense to the charges.[6]

Twenty-seven states permit an inmate to have a lawyer or civilian advocate present at the hearing to help present evidence. Because few inmates have the financial resources to hire attorneys to attend prison hearings, however, and because the time between the charges and the hearing is usually short, this privilege is rarely utilized.[7]

Raw statistics indicate that twenty-eight jurisdictions allow the accused or his or her legal representative to question the witnesses, or at least the charging officer. In almost all twenty-eight, however, this procedure is limited by the hearing officer's ability to exclude the accused inmate from the hearing, to restrict the accused inmate to the submission of written questions only to the hearing panel, and to allow the witness to refuse to answer.

Virtually all jurisdictions permit accused inmates to call their own witnesses, but none gives inmates the

[6] For example, in a telephone conversation on January 8, 1985, Richard Lester, Health Care Coordinator in Attica Correctional Facility in New York, stated that 40% of inmates at Attica have active psychiatric files. Similarly, a survey of prisoners in five California counties revealed that 37% were mentally ill, with half of those inmates suffering from personality disorders. President's Commission on Mental Health, *Report of the Task Panel on Legal and Ethical Issues* 1455 (1980).

[7] *See* Babcock, *supra* note 4, at 1938-40.

absolute right to call anyone they wish. At least twenty-five states expressly confine an inmate's witnesses to those who will provide only "relevant" and "noncumulative" testimony, as decided by the hearing officer. Regulations requiring written explanations of reasons for not calling an accused inmate's witnesses exist in only fifteen jurisdictions. No state system allows inmates to subopena reluctant witnesses.

The evidence which disciplinary committee members are entitled to rely on in determining an inmate's guilt is extremely broad, thereby restricting an inmate's ability to defend himself or herself. No disciplinary system requires the application of formal evidentiary rules; all permit the introduction of hearsay. Only four states require testimony under oath. At least seven jurisdictions specifically provide that the written misbehavior report is enough evidence to find an inmate guilty. Other jurisdictions yield the same result by failing to specify in their regulations the requisite type or quantum of inculpatory evidence.

To summarize, regulations which implement prison disciplinary systems provide, for the most part, little more than those procedures which are constitutionally mandated, and a great many fewer than the *Butz* Court considered crucial in evaluating a claim of quasi-judicial absolute immunity. In fact, like most states, the four state *amici* of the government provide inmates with very few procedural protections. Of the several safeguards analyzed in *Butz*, including representation by a lawyer, power to subpoena witnesses, ability to conduct prehearing discovery, testimony given under oath with cross-examination permitted, submission of rebuttal evidence, preparation of a verbatim transcript, and independence of the hearing officer, California and Hawaii provide only the right to submit rebuttal evidence. Inmates in Alabama and Wyoming do not fare much better. Of the *Butz* procedural protections, these states provide only the right to submit rebuttal evidence and a transcript of the hearing.

IV. Where A Prison Disciplinary System Does Not Incorporate Procedures Adequate To Protect Its Judgmental Independence, It Does Not Operate As A Judicially Comparable Administrative Tribunal Which Would Warrant The Conferral Of Absolute Immunity Upon Hearing Officers.

A. Nationwide Research Uniformly Reveals That Inmate Disciplinary Hearings Over Which Prison Staff Preside Function Chiefly To Impose Punishment On Inmates And To Brandish Prison Officials' Authority, But Rarely To Determine An Inmate's Guilt Or Innocence.

The absence of all but rudimentary procedural protections in the majority of inmate disciplinary systems has far more than abstract statistical or jurisprudential significance. Empirical research demonstrates that most disciplinary systems function not as guilt-determining proceedings but as disposition-dispensing forums. Stated differently, an inmate's guilt is virtually always presumed; the practical function of a prison employee who doubles on occasion as a hearing officer is merely to impart punishment.[8]

Research further reveals that the dispositions which are meted out at skeletal disciplinary hearings have little correlation to the misconduct they are intended to punish. Rather, punishments are much more related to extraneous factors such as the hearing officer's prior familiarity with the inmate, the officer's impressions of the inmate's attitude at the hearing, the inmate's overall disciplinary record, and, perhaps surprisingly, the inmate's age and marital status at the time of his or her admission.[9] Perhaps not surprisingly, it is also clear that

[8] *See* Marin, *supra* note 4, at 208; Flanagan, "Discretion in the Prison Justice System: A Study of Sentencing in Institutional Disciplinary Proceedings," 19 *J. Research Crime & Delinq.* 216, 234 (1982); Harvard Center for Criminal Justice, "Judicial Intervention in Prison Discipline," 63 *J. Crim. L., Criminology and Police Sci.* 200, 223 (1972); Jacob and Sharma, *supra* note 5, at 72 & n.339.

[9] Marin, *supra* note 4, at 208; Flanagan, *supra* note 8, at 231-34; Gifis, "Decision-making in a Prison Community," in *The Invisible Justice System: Discretion and the Law* 317-35 (B. Atkins and M. Pogrebin ed. 1978); Harvard Center for Criminal Justice, *supra* note 8, at 216; Jacob and Sharma, *supra* note 5, at 30.

race prejudice against minority inmates by corrections staff has a significant role in the apportionment of punishment.[10]

Researchers attribute these phenomena to the absence of the procedural safeguards the *Butz* Court found essential to independent, influence-free decision-making, and the concomitant wide latitude allowed hearing officers at every stage in the proceedings.[11] Dominating the causal factors is the use of disciplinary committee members who work primarily as prison corrections staff and only incidentally as hearing officers.[12]

The precise extent to which this virtually universal feature of prison disciplinary systems affects the outcome of disciplinary hearings is not easy to assess. Nonetheless, analysts have unanimously observed what Judge Cudahy, concurring in the decision below, deduced: the use of a hearing officer who is also a prison staff member is inimical to a fair and impartial determination of an inmate's alleged misconduct. *See Saxner v. Benson*, 727 F.2d 669, 675 (7th Cir. 1984).

Researchers point out that the hearing officer's employee status affects his or her assessment of the charges against the inmate in a number of adverse ways. Hearing officers are inevitably friends, acquaintances, and fellow workers of the corrections officials who file

[10] Babcock, *supra* note 4, at 1059; Poole and Regoli, "Race, Institutional Rule Breaking, and Disciplinary Response: A Study of Discretionary Decision Making in Prison," 14 *Law & Soc'y Rev.* 931-46 (1980); Ramirez, "Race and the Apprehension of Inmate Misconduct," 11 *J. Crim. Just.* 413, 423-24 (1983).

[11] Babcock, *supra* note 4, at 1095-96; Jacob and Sharma, *supra* note 5, at 71-72, 76, 92-94; Note, *supra* note 5, at 191-92; *see also* Poole and Regoli, *supra* note 10, at 942-43; Ramirez, *supra* note 10, at 425. *See generally* Flanagan, *supra* note 8.

[12] Babcock, *supra* note 5, at 1095-96; Harvard Center for Criminal Justice, *supra* note 8, at 210-11; Jacob and Sharma, *supra* note 5, at 14, 19-99; Note, *supra* note 5, at 160-64.

charges against the inmates they judge. The institutional and personal pressures upon hearing officers to support their friends and co-workers is difficult, if not impossible, to avoid. Hearing officers often feel that dismissal of charges will have a negative impact on overall prison discipline.[13] Some investigators have noted that, "dismissal of a disciplinary charge implies that the reporting staff was wrong. For the morale of the rank and file correction officers, such inferences cannot be permitted."[14] Other researchers have emphasized that:

> Board members may not act impartially because they feel that their duty is to support the staff in all cases. As one Board member put it, "The philosophy in the past had always been back up your officers, whether they are right or wrong."[15]

Directly related to the hearing officer's daily contact and familiarity with other correction staff is the all but irrebuttable presumption of credibility they accord to their fellow officers, and the corresponding barely rebuttable presumption against credibility they accord to inmates.[16] In a landmark study which, though published more than a decade ago, is cited extensively today due to its enduring vitality, the Harvard Center for Criminal Justice concluded:

> The presumption of credibility must be against the inmate if the members of the Disciplinary Board are to continue to be on good terms with the charging and superior officers with whom they work daily. This maintenance of staff morale is reflected not only in the minimization of the fact-finding

[13] Flanagan, *supra* note 8, at 217.

[14] G. Kassebaum, D. Ward, and D. Wilmer, *Prison Treatment and Parole Survival: An Empirical Assessment* 53 (1971).

[15] Harvard Center for Criminal Justice, *supra* note 8, at 210. *See also id.* at 210-11.

[16] Flanagan, *supra* note 8, at 217-18; Harvard Center for Criminal Justice, *supra* note 8, at 200; Jacob and Sharma, *supra* note 5, at 14.

> process, but also in the types of conduct subject to disciplinary action.[17]

Likewise, a correction officer's familiarity and previous interactions with an inmate, and knowledge of the inmate's disciplinary history, will influence his or her determination, as a hearing officer, of the inmate's guilt or innocence.[18] Finally, corrections staff who act as hearing officers rarely have legal training and have little, if any, specialized training in the protection of an inmate's constitutional due process rights.[19]

B. A Close Examination Of New York's Inmate Disciplinary System Confirms That Without Judicially Comparable Procedural Safeguards, An Inmate Disciplinary System Functions In A Manner Radically Different From The Independent Hearing Which The *Butz* Court Regarded As Fundamental To A Consideration Of A Hearing Officer's Entitlement To Absolute Immunity.

Among researchers, there is little doubt that the utilization of prison corrections staff as hearing officers and the absence of judicially equivalent procedural safeguards adversely affect the purpose of a disciplinary hearing to arrive at a fair and objective result. What researchers have observed on a systemwide basis is observed as well by prisoners' rights advocates, such as *amici*, who are intimately familiar with individual inmate disciplinary systems. New York's inmate disciplinary system graphically illustrates the ramifications of a prison disciplinary process which operates without the safeguards against influence and prejudice which the *Butz* Court found essential to objective and impartial

[17] Harvard Center for Criminal Justice, *supra* note 8, at 223.

[18] Harvard Center for Criminal Justice, *supra* note 8, at 217; Jacob and Sharma, *supra* note 5, at 96-97.

[19] Jacob and Sharma, *supra* note 5, at 92-93, 95-96.

quasi-judicial decision-making. *Butz v. Economou*, 438 U.S. at 512.[20]

Like most other states, New York State's prison disciplinary system incorporates only the basic constitutionally mandated procedures.[21] When an inmate is given notice of the charges, he or she may be placed in solitary confinement for up to seven days prior to a hearing. If the inmate is confined to a cell or is illiterate, a prison employee will be designated to help the inmate prepare a defense, generally by interviewing the witnesses requested by the inmate. Although these interviews are ostensibly for the inmate's benefit, the written results of the interviews are almost always provided to the hearing officer.

The single hearing officer must be a high-ranking or "designated" employee of the Department of Correctional Services. Except in rare situations, the hearing is conducted by a corrections staff member of the prison where the inmate is confined. The sole limitation placed on the hearing officer is that he or she cannot have witnessed, investigated, or been involved in the alleged misbehavior.

The regulations allow the hearing officer to rely exclusively on the written charges to find an inmate guilty of misbehavior; testimony by an adverse witness

[20] New York's inmate disciplinary system has been the focus of observation and litigation by Prisoners Legal Services of New York since 1975. *See Bounds v. Smith*, 430 U.S. 817, 831 n.20 (1977). According to Donald Selsky, Coordinator of Inmate Disciplinary Programs for the New York State Department of Correctional Services, approximately 1000 superintendent's hearings per month are conducted in New York State prisons. Affidavit of Donald Selsky, submitted in *Matter of Jones v. Smith*, 64 N.Y.2d 1003 (1985), May 21, 1984.

[21] The procedures governing New York's inmate disciplinary system are found at 7 N.Y.C.R.R. §§250-70 (1983). The description of New York's disciplinary process that follows is based on the applicable regulations as well as Prisoners Legal Services' advocates' knowledge about the implementation of the regulations.

is not required.[22] In the isolated hearing where the hearing officer interviews the correction officer who wrote the charges, the accused inmate will almost always be excluded from the hearing in the interest of "security."

The hearing officer may interview witnesses requested by the accused inmate, but only if he or she deems their testimony "material or not redundant," and if calling the witness "does not jeopardize institutional safety or correctional goals." 7 N.Y.C.R.R. §254.5. If an accused inmate is confined to solitary confinement pending the hearing, odds are extremely high that the hearing officer, again in the interest of "security," will exclude the inmate from the hearing while his or her own witnesses are interviewed.

In no case may an accused inmate directly question his or her own witnesses. In no case may an accused inmate cross-examine any adverse witnesses who testify. In no case may a lawyer, paralegal, employee assistant, or inmate assistant be present at the hearing to help the accused inmate present his or her defense.

Because of the lack of procedures normally implemented to assure a judicious outcome, abuse of the inmate disciplinary system by corrections officials is both predictable and common. The hearing officer's incentive to consider other than the barest accusations as proof of an inmate's guilt is nonexistent. The accused inmate's ability to rebut the inculpatory evidence and present a meaningful defense is minimal.

In New York, as in the federal and other prison disciplinary systems, the impact of a battery of hearing

[22] This aspect of New York's disciplinary regulations is currently being litigated in the New York State courts. *Compare Matter of Jones v. Smith*, 101 A.D.2d 705 (4th Dep't 1984), *aff'd on other grounds*, 64 N.Y.2d 1003 (1985) and *Matter of Santana v. Coughlin*, 105 A.D.2d 789 (2d Dep't 1984) *with Matter of Garcia v. LeFevre*, 102 A.D.2d 1004 (3rd Dep't 1984), *rev'd on other grounds*, 64 N.Y.2d 1001 (1985).

officers who are principally prison corrections staff with supervisory responsibilities, security-related functions, and a number of other duties within the prison, cannot be overemphasized. In their chief capacities, they come into daily contact with, and form opinions about, the inmates they judge as hearing officers. They work daily with, and are often friends of, the corrections officers who write the misbehavior reports upon which they rely to determine an accused inmate's guilt. Certainly, it strains reality to suggest that under these circumstances hearing officers are methodically able to segregate their personal biases about their wards, fellow employees and friends from their obligation to evaluate the evidence before them.

The sworn statements of a former Deputy Superintendent at Auburn Correctional Facility in New York reflects this inescapable consequence, observed without exception by researchers. Former Deputy Superintendent Abraham Taylor was deposed in conjunction with a lawsuit by former inmate Ron Johnson who suffered a broken leg in a confrontation with guards who Johnson alleged wielded axe handles. Following the incident, Johnson was found guilty of and punished for assaulting the guards at a disciplinary hearing conducted by Taylor.

Taylor had been Deputy Superintendent for eight years at the time of his deposition in 1980. He testified that he held ten to twelve hearings monthly.[23] Taylor regarded all Auburn employees, including himself, as "one family."[24] Many Auburn correction officers were his close friends.[25] Taylor frankly admitted he leaned toward believing the reports and testimony of guards over the testimony of inmates.[26] Although he would dismiss

[23] Transcript of deposition of Abraham Taylor in *Johnson v. Colton* (N.Y. Sup. Ct., Cayuga Cy.), November 7, 1980, at 11.

[24] *Id.* at 29.

[25] *Id.*

[26] *Id.* at 9-10, 13-15.

charges against an inmate if he were convinced the inmate was innocent and the guards were lying, he had never dismissed all charges against an inmate in all the years he had presided over hearings.[27] Taylor testified that, since the charge against Johnson was that he had assaulted guards, Johnson's statements that he had been beaten by axe-wielding guards was irrelevant, although he knew of Johnson's broken leg.[28] Johnson's case was ultimately settled for, *inter alia*, a damage award.

The potential for abuse in New York State's prisoner disciplinary system is so transparent that even the Commissioner of New York's Department of Correctional Services has tacitly acknowledged its inadequacies, albeit in a different context. Commissioner Thomas A. Coughlin, III recently testified in court in support of the tactics used by the Inspector General of the Department of Correctional Services to investigate physical assaults of inmates by corrections staff. Under oath, the Commissioner candidly stated:

> [I]n my experience. . ., if there is an assault—an alleged assault by Corrections Officers on inmates, the Corrections Officers usually all tell the same story. . .[T]he usual story is that the inmate assaulted them first and they responded with appropriate use of force.[29]

The Commissioner further testified that he has "had a problem in this Department for four and one-half years with Corrections Officers beating up inmates,"[30] that corrections officers have a "code of silence,"[31] and that in the dozens of cases of alleged physical abuse of inmates

[27] *Id.* at 9-10, 29-30.

[28] *Id.* at 12-13, 16.

[29] Transcript of testimony in *Matter of Brian F. Malone, Attorney, and Committee on Professional Standards* (N.Y. App. Div. 3rd Dep't), (January 20, 1984), at 18.

[30] *Id.* at 28.

[31] *Id.* at 18.

by correction officers he investigated, no correction officer had ever testified against another.[32]

Under the procedures followed in New York's disciplinary system, it is commonplace for an inmate to be found guilty of physically assaulting a corrections officer solely on the basis of the written charges filed by the corrections officer against the inmate, regardless of the vehemence of the inmate's denial and the credibility of his or her supporting witnesses. Yet, as conceded by Commissioner Coughlin, it is virtually common knowledge that an inmate who has been physically assaulted by a corrections officer will be both accused and found guilty of physically assaulting the corrections officer.

The large potential for manipulating New York's disciplinary system to the detriment of the inmate is apparent in other situations as well. In *Morrison v. LeFevre*, 592 F.Supp. 1052 (S.D.N.Y. 1984), the court found after a lengthy evidentiary hearing that several corrections officers conspired to frame Thomas Morrison, an inmate at Green Haven Correctional Facility, for the possession of contraband. As a result of the corrections officers' conduct, Morrison was punished, ostensibly in accordance with New York's disciplinary procedures. The court determined, however, that Morrison was deprived of several of his constitutional due process rights before and during his disciplinary hearing. *Id.* at 1072-73. Defendants, including the hearing officer, were ordered to pay Morrison compensatory damages.

As implied by Commissioner Coughlin, the filing of false charges against inmates by corrections officers is not unusual. What makes *Morrison* unique, however, is that it was, in Judge Sofaer's words, "one of those rare cases. . .in which a prisoner has succeeded in proving he

[32] *Id.* at 17-18.

was subjected to just such a violation of his constitutional rights [by being framed]." *Id.* at 1056.[33]

Refuting one's guilt at a New York disciplinary hearing is virtually impossible where written charges are almost always considered more credible than an accused inmate's verbal denial and the corroborating testimony of his or her witnesses. Indeed, Morrison was able to establish his innocence only in a strictly monitored neutral forum where he was afforded all the procedural protections lacking at his disciplinary hearing, such as the assistance of a legal advocate, the opportunity to cross-examine adverse witnesses, and the ability to use available discovery tools. That the inmate disciplinary system so readily enabled Morrison to be punished for misbehavior despite his innocence is a testament to the inherent problems of proving one's innocence in a system devoid of strict procedural safeguards.

V. Granting Absolute Immunity To Disciplinary Hearing Officers Will Leave Inmates Whose Constitutional Rights Have Been Violated With No Effective Means Of Deterring Unconstitutional Conduct Or Of Compensating Them For Harm They Incurred When The Hearing Officers Infringed Their Rights.

When an inmate is disciplined within a prison system, the possible sanctions imposed on him or her can be characterized as falling within one of two broad areas. First, the inmate can spend a longer period of time in prison as a result of loss of good time. Second, the inmate can be immediately punished by placement in solitary confinement, loss of all prison privileges, and other restrictions on the liberty of the inmate.

[33] *See also Pino v. Dalsheim*, 605 F.Supp. 1305 (S.D.N.Y. 1984), where the court held that the hearing officer's actions at plaintiff's disciplinary hearing "extend[ed] the mockery of due process begun by the employee assistant and render[ed] the [hearing] an empty formality." *Id.* at 1318.

In those cases in which the penalty imposed is loss of good time, and the disciplinary procedures followed violated the inmate's constitutional rights, a meaningful remedy exists to make the inmate whole. The good time which was taken from the inmate's record is simply restored, and the record of its loss in the first place is expunged. On the other hand, when an inmate is wrongly punished by locking him or her in solitary confinement, there exists no meaningful remedy save that of damages.

Such a penalty involves a serious loss of liberty. Although a prisoner's "liberty" is severely restricted simply by virtue of his or her incarceration, a sentence to solitary confinement entails a further curtailment of liberty vastly greater than that afforded to inmates within the general population of the prison.

Typically, such inmates are confined to solitary confinement cells twenty-three to twenty-four hours per day. Their ability to shower is reduced from daily to perhaps once weekly. The inmates are typically denied telephone privileges, the right to receive packages, the right to buy goods at the commissary, and the right to earn "points" which may be used to enjoy privileges such as family visits. There are often restrictions on food, both in selection and in quantity. Opportunities for indoor or outdoor recreation are severely limited, often to one hour daily or even none at all. The opportunity to participate in group religious services is eliminated. Access to legal materials is often more restricted than in the general population. The inmates are unable to participate in work or training programs, and thus are prevented from earning what little wages would otherwise be available to them. Visits may be strictly limited to legal visits; personal contact with family members and friends may be prohibited. Inmates are denied contact with other prisoners.

In the restrictive confines of a prison, an inmate's freedom to leave his or her cell, participate in prison programs, and take advantage of prison opportunities is an exceedingly precious commodity; its deprivation by the government is a deprivation of monumental magnitude. Even a relatively short confinement of several days or weeks would constitute a grievous loss of liberty which cannot be remedied simply by declaring that it was ordered illegally or by expunging references to the proceeding in the inmate's records. Once the time is spent in solitary, it is lost forever to the inmate.

A cursary examination of records of disciplinary proceedings, however, reveals that many dispositions involve sentences to solitary confinement of months or even years.[34] In such cases, the deprivation of liberty is exacerbated and the inadequacy of a remedy excluding damages is magnified. These sentences are all the more serious in light of the considerable length of time which appeals take, both administratively and in the courts.

For example, in New York State a disciplinary hearing disposition which imposes over thirty days of solitary confinement must be appealed to the Commissioner of the Department of Correctional Services. Regulations require that a decision be rendered by the Commissioner within sixty days of receipt of the appeal. Experience shows, however, that decisions are rarely, if ever, forthcoming in fewer than sixty days, and are frequently issued three months or more after the appeal was received.

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[34] In *amicus* Prisoners Legal Services' experience, disciplinary dispositions of six months to a year and a half in solitary confinement are common and are often extended by similar sentences when inmates are punished for misconduct which allegedly occurs while the inmates are still in solitary confinement.

Following an unfavorable administrative appeal decision, the inmate may apply to state court to review the decision. This process can be expected to encompass at least another six to eight weeks, but is more likely to exceed two months. If an appeal to a higher court is made, of course, the process can take at least several months longer.[35]

Thus, an inmate who has been sentenced to solitary confinement in violation of his or her constitutional rights may end up serving several months of, if not the entire sentence before his or her rights are vindicated. This amount of time is surely not insignificant in light of the degree of deprivations imposed on the disciplined inmate. To deny such an aggrieved inmate the right to damages as a matter of course would be a miscarriage of justice of the highest degree.

VI. The Refusal To Endow Prison Hearing Officers With Absolute Immunity Will Neither Increase The Burden On The Courts Nor Force Hearing Officers To Defend Themselves Against Multitudes Of Frivolous Lawsuits.

No doubt because their other arguments have little merit, the federal and state *amici* governments conjure up the effete image of a floodgate of frivolous litigation inundating the federal judiciary if the decision below is affirmed. In the government's and *amici's* view, if this Court rules that hearing officers are not afforded absolute immunity, inmates will descend upon the

[35] In this regard it is worthy of note that the government may appeal an unfavorable decision made at a lower court level. In New York, when the state files a Notice of Appeal from a decision favorable to the inmate, a stay of the order is automatically granted to the state pending appeal. N.Y.C.P.L.R. 5519. Further, New York State courts have held that *habeas corpus* relief, which is not automatically stayed by the state's appeal, is not available to an inmate who seeks to be released from solitary confinement into the general prison population. *People ex rel. Corcoran v. Smith*, 105 A.D.2d 1142 (4th Dep't 1984).

courthouses throughout the country in unprecedented numbers with complaints in hand, eager to avail themselves of the newly created opportunity to sue hearing officers.

Such a dire prediction is itself frivolous. In the first place, it presumes that, until now, disciplinary hearing officers have been shielded by absolute immunity. On the contrary, since this Court ruled in *Procunier v. Navarette, supra*, that prison officials are generally entitled to invoke merely qualified immunity, only Virginia's and North Carolina's prison disciplinary systems have been found by a federal circuit court to be "functionally comparable" to a judicial hearing such that absolute immunity for their hearing officers was warranted. *See Segarra v. McDade*, 706 F.2d 1301 (4th Cir. 1983); *Ward v. Johnson*, 690 F.2d 1098 (4th Cir. 1982). Other circuit courts have either held that hearing officers are immune from financial liability, *see King v. Wells*, 760 F.2d 89, 95 (1985); *King v. Higgins*, 702 F.2d 18 (1st Cir.), *cert. denied*, 464 U.S. 965 (1983), or have affirmed damage awards against hearing officers without speaking to the immunity issue. *See McCann v. Coughlin*, 698 F.2d 112 (2d Cir. 1983). As a result, the understandable assumption of *pro se* inmate litigants and their legal advocates has been that hearing officers are not absolutely immune from lawsuit, and they have sued accordingly. There is, therefore, simply no basis for the proposition that the number of lawsuits against inmate disciplinary hearing officers will rise dramatically if this Court denies the government's appeal.

Nor is there any basis to believe that prison hearing officers will face a heavy burden in defending themselves against frivolous inmate lawsuits if this Court declines to cloak them with absolute immunity. As this Court previously recognized:

> Insubstantial lawsuits can be quickly terminated by federal courts alert to the possibilities of artful pleading. . . . [F]irm application of the Federal Rules of Civil Procedure will ensure that . . . officials are not harassed by frivolous lawsuits. *Butz v. Economou*, 438 U.S. at 507.

Many civil rights lawsuits involve contested allegations which can be resolved only by an evaluation of witness testimony, such as physical brutality charges against police officers or prison guards. In contrast, the transcript of the disciplinary hearing will reveal in most cases whether a hearing officer denied an inmate his or her constitutionally mandated procedural rights. As such, a motion to dismiss or for summary judgment will frequently be an adequate device to determine a hearing officer's liability.[36] Only in those cases where liability is established might an evidentiary hearing be necessary to determine the damage award. *See McCann v. Coughlin*, 698 F.2d at 126-27.

Other procedural devices exist as well to protect a hearing officer against vexatious lawsuits. Rule 11 of the Federal Rules of Civil Procedure provides that if a signed paper is interposed for improper purposes, sanctions are to be imposed on the offender. A litigant can be held in contempt and liable for expenses and attorneys fees if a bad faith affidavit is submitted in support of a motion for summary judgment. Fed.R.Civ.P. Rule 56(g). Attorneys fees can be awarded against even a *pro se* litigant who sues in bad faith. *See Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Gerena-Valentin v. Koch*, 739 F.2d 755, 761 (2d Cir. 1984).

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[36] The use of summary judgment to resolve these cases will be even more appropriate following this Court's decision in *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, _____ U.S. _____, 53 U.S.L.W. 4778 (June 17, 1985), which effectively eliminated an inmate's right to federal court review of the correctness of the guilty determination.

Besides these procedures, the federal courts' ability to deny motions to proceed *in forma pauperis* under 28 U.S.C. §1915(d) on the ground of frivolousness is especially useful in preventing prison hearing officers from being subjected to harassing lawsuits. This screening device, which is invoked frequently by federal district courts, permits the dismissal of frivolous complaints before they are served on defendants.[37] The overwhelming majority of inmates who file civil rights lawsuits also move to proceed *in forma pauperis*. As such, this procedure operates to keep prison disciplinary hearing officers more than other administrative hearing officers from ever knowing that frivolous lawsuits were filed against them.[38]

In short, denying the governments' attempt to immunize absolutely prison disciplinary hearing officers will neither increase the burden on the federal courts nor subject the officers to scores of frivolous lawsuits. What the United States, California, Arizona, Wyoming, and Hawaii conveniently fail to acknowledge, however, is that the easiest way for hearing officers to avoid financial

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[37] The use of this screening tool, according to one study, results in the dismissal of over two-thirds of all prisoners' civil rights lawsuits. Turner, "When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts," 92 *Harvard L.R.* 610, 617-19 (1979).

[38] Recent analysis of federal court litigation strongly suggests that, contrary to popular belief, the burden imposed on defendants and the federal judiciary by meritless prisoners' civil rights lawsuits is greatly exaggerated. First, the number of prison-related civil rights lawsuits has increased in proportion no more than the number of nonprison-related civil rights lawsuits. Eisenberg, "Section 1983: Doctrinal Foundations and an Empirical Study," 67 *Cornell L.R.* 482, 523 (1982). The study concludes:

> [T]he sheer volume of section 1983 cases poses no serious threats to the federal court system. Section 1983 cases neither place unbearable burdens on the courts nor direct massive resources to relatively minor cases.

Id. at 524. Additionally, of the prisoner-initiated civil rights lawsuits filed, all but a few are disposed of without trial. *Id.* at 617-18.

liability is to provide inmates their constitutionally mandated rights. If they were to do so, the entire debate about their dubious need for absolute immunity would be purely academic.

VII. The Public's Compelling Interests In Deterring And Compensating For Unconstitutional Conduct Far Outweighs Hearing Officers' Interest In Evading Financial Liability For Their Unconstitutional Acts.

Because of the intrinsic obstacles to an objective evaluation of the facts, adherence at a prison disciplinary hearing to fundamental constitutionally mandated procedures at a prison disciplinary hearing is critical. At a minimum, the elementary constitutional safeguards prescribed by *Wolff v. McDonnell* and its progeny offer an inmate an initial opportunity to try to convince a hearing officer of his or her innocence. That the number of constitutionally required procedures, let alone the number of procedural safeguards provided in New York and other states, is so few, ensuring they are provided is undoubtedly a simple task. Conversely, failing to provide an inmate with his or her constitutional due process rights, thereby depriving the inmate of even a basic chance to present a meaningful defense, creates a blatant mockery of the proceedings.

The federal civil rights statutes and the corresponding *Bivens* rights doctrine exist both to afford meaningful compensation to individuals whose federal constitutional rights were violated by governmental officials, and to deter their unconstitutional conduct. *See Scheuer v. Rhodes*, 416 U.S. at 238; *Monroe v. Pape*, 365 U.S. 167 (1961). The doctrine of absolute immunity enables governmental officials to disregard utterly an individual's constitutional rights without concern that they will be held financially accountable despite their intentions. Because of this harsh result, this Court has repeatedly emphasized that absolute immunity should be granted only in exceptional circumstances. *See Harlow v. Fitzgerald*, 457 U.S. 800, 814-15 (1982); *Nixon v.*

Fitzgerald, 457 U.S. 731, 747 (1982); *Butz v. Economou*, 438 U.S. at 507; *Wood v. Strickland*, 420 U.S. 308, 320 (1975); *Scheuer v. Rhodes*, 416 U.S. at 242-45.

Given the nonadversarial nature of prison disciplinary systems, their focus on apportioning punishment rather than determining the facts, the hearing officers' lack of insulation from outside pressures, and the absence of a great many other judicially comparable procedural safeguards, it is patent that the exceptional circumstances for granting absolute immunity do not exist in all but arguably a handful of state prison disciplinary systems. Conversely, the totally isolated setting of a prison discipline hearing, insulated as few other government hearings are from public scrutiny, the ease with which prison hearing officers can comply with their constitutional obligations if they choose to do so, and the irreversible harm suffered by inmates whose constitutional due process rights are violated makes the possibility of a damage award to control unconstitutional conduct compelling as a matter of public policy. To flout such paramount public policy interests by conferring absolute immunity on disciplinary hearing officers will irrevocably ratify the prediction that this Court's "noble holdings [are] little more than empty promises." *Wolff v. McDonnell*, 418 U.S. at 581 (Marshall, J., dissenting).

VIII. Conclusion.

For these reasons, *amici* respectfully submit that the judgment and order of the Court below should be affirmed.

Respectfully submitted,

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APPENDIX A

Statements Of Interest Of Individual Organizations *Amici Curiae*

Prisoners' Legal Services of New York, Inc. is a six-office, non-profit, public interest law firm which provides legal representation to indigent inmates incarcerated in correctional facilities throughout the State of New York. PLS advocates represent state inmates on civil matters, primarily relating to inmates' conditions of confinement.

The National Conference of Black Lawyers is a non-profit legal association of lawyers and legal workers organized in 1968. NCBL performs a broad range of legal support work around issues which impact the poor and communities of color. NCBL has a special interest in cases involving the incarcerated because people of color and the poor are disproportionately represented in prisons throughout the United States.

The National Lawyers Guild is a forty-nine year old organization composed of lawyers, judges, law professors, legal workers, and law students, that has consistently defended the civil rights of indigents and other minority groups throughout the country. The Guild carries out litigation, educational, and organizational efforts in the pursuit of social justice.

The National Legal Aid and Defenders Association (NLADA) is a private, non-profit, national membership organization headquartered in Washington, D.C. whose purpose is to ensure the availability of quality legal services in civil and criminal cases to all persons unable to retain counsel. Specifically, NLADA represents approximately 1,753 programs engaged in providing representation to indigents accused of criminal offenses. The membership of NLADA, therefore, comprises most

public defender offices and legal services agencies around the nation, as well as assigned counsel plans and private practitioners. Consequently, NLADA has a vital interest in the issue of whether hearing officers at disciplinary hearings within prisons are entitled to absolute immunity, since the individuals who regularly appear before such officers are indigent, and NLADA's membership represent these indigents on a daily basis.

The Alabama Prison Project is an affiliate of the Southern Coalition on Jails and Prisons. It is a non-profit organization which supports the rights of prisoners and their families, opposes the death penalty, and seeks alternatives to incarceration. The APP answers letters from inmates and attempts to resolve problems that arise in the prisons, including those related to treatment of prisoners during disciplinary hearings.

The Southern Poverty Law Center (the Center) is a non-profit law firm located in Montgomery, Alabama, that specializes in the defense and enforcement of constitutional rights, particularly those of the less fortunate, throughout the Southeastern United States. For a number of years, the Center has served as counsel for the class of all prison inmates throughout the State of Alabama, in a statewide prison conditions suit, and a number of its other clients are prisoners whose constitutional rights the Center seeks to enforce.

The Jerome N. Frank Legal Services Organization (L.S.O.) is the clinical legal education program of the Yale Law School. L.S.O. coordinates state legal assistance programs under faculty supervision for individuals who cannot obtain or afford quality legal services. Among the

populations which are served are state and federal prisons throughout Connecticut. Since its founding in 1970, L.S.O.'s primary assistance projects have counseled almost 5,000 state and federal prisoners. L.S.O. assists prisoners in the areas of prison disciplinary proceedings, parole and sentencing problems, and state and federal post-conviction proceedings. L.S.O. has participated as appellate council in cases before the First, Second, and District of Columbia Circuits as well as before the Supreme Court of the United States. L.S.O. has also appeared as an *Amicus Curiae* in the Supreme Court of the United States and in several Circuits.

The Florida Justice Institute, Inc. is a not-for-profit public interest law organization established in 1978 by leaders of the private bar to advocate for humane treatment for institutionalized persons. The Institute is currently involved in numerous cases to improve conditions within Florida's prisons and jails. Funding for this work is provided by the Florida Bar Foundation.

Legal Services For Prisoners, Inc. (Kansas) is a private, non-profit, state funded corporation. LSP was founded in 1972, and provides legal services to all indigent inmates in the Kansas penal system, including representing inmates in prison disciplinary hearings.

The Prisoners Assistance Project of the Legal Aid Bureau, Inc. provides legal services to more than 13,000 inmates in the state prisons of Maryland. The Project assists inmates with the preparation of their civil rights complaints, petitions for federal *Habeas Corpus* and other meaningful legal papers.

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The Gay Community News Prisoner Project receives 80 to 100 letters per week from prisoners across the nation, many of them in Federal prisons. They detail with abundant clarity how the anti-gay prejudices of the society at large are mirrored in the disciplinary actions of the prison officials. It would be extremely damaging to their constitutional rights for disciplinary system hearing officers to be granted absolute immunity.

Massachusetts Correctional Legal Services is a non-profit corporation which provides legal assistance, advice and representation to prisoners in state and county institutions in Massachusetts. The organization's main purpose is to enforce and further the basic civil rights of incarcerated men and women, and its staff attorneys have participated in numerous administrative hearings and litigated cases concerning prisoners' rights in disciplinary hearings.

The Mississippi Chapter of the National Conference of Black Lawyers is a legal organization consisting of fifty (50) attorneys and legal workers. One of the primary purposes of the organization is to assist incarcerated persons in seeking redress for deprivation of their constitutional and statutory rights.

The New York State Defenders' Association is a non-profit association comprised of lawyers and non-lawyers devoted to improving the quality of criminal defense representation for indigents. The Association studies public defense systems, compiles and analyzes data, and provides technical and legal assistance to localities and public defense attorneys throughout this state. The Association frequently receives requests from state

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inmates facing disciplinary hearings on alleged infractions and is uniquely concerned with the issue raised by this case as to whether or not disciplinary hearing officers are entitled to absolute immunity.

Keystone Legal Services, Inc., has two state correctional institutions within its five-county service area, in central Pennsylvania, which house over 3,000 inmates. Over the years, our organization has provided legal advice and representation to inmates within our service area concerning prison conditions and practices and parole. As an organization that assists low-income individuals, we are striving to improve the rights and conditions under which the average inmate must live.

The Defender General of the State of Vermont is authorized by state law to provide legal services to all those who are incarcerated in the custody of the Vermont Commissioner of Corrections. Included among the services provided to Vermont inmates is legal representation of those who seek to challenge adverse decisions of institutional disciplinary committees in either state or federal court.

The Institutional Legal Services Project of Evergreen Legal Services is a Washington State funded organization. ILSPELS provides legal services to three of the major prisons in the state of Washington. Its duties include pretrial services in the courts, post-conviction remedies, and prison displinary hearings assistance. The ILSPELS has a special interest in cases involving prisons and prison officials.

Appendix A—Statements Of Interest Of Individual Organizations Amici Curiae.

Wisconsin Correctional Services, Inc., was founded in 1912, under the name of Society for the Friendless. WCS was incorporated in 1940 as a non-profit organization. WCS runs forty programs to assist correctional clients with problems ranging from drug and alcohol dependency, to helping mentally ill individuals. Some of the programs WCS runs include halfway houses, drug residency programs, and pre-release support groups. Finally, WCS serves approximately 5,000 clients per year, and employs a staff of 160 individuals.